

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company
for Adoption of its 2004 Energy Resource
Recovery Account (ERRA) Forecast Revenue
Requirement, for Review of Contract
Administration, Least Cost Dispatch and
Procurement Activities during the Record Period
January 1, 2003, Through May 31, 2003, and for
Approval of its 2004 Ongoing Competition
Transition Charges (CTC) Revenue Requirement
and Proposed Rate Design. (U 39 E)

Application 03-08-004
(Filed August 1, 2003)

**SCOPING MEMO AND RULING OF THE ASSIGNED COMMISSIONER AND
ADMINISTRATIVE LAW JUDGE REGARDING THE 2004 ENERGY
RESOURCE RECOVERY ACCOUNT APPLICATION**

Summary

On August 1, 2003, Pacific Gas and Electric Company (PG&E) filed its application for the adoption of its 2004 Energy Resource Recovery Account (ERRA) revenue requirement forecast, for review of its contract administration, least cost dispatch and procurement activities for the record period January 1, 2003 through May 31, 2003, and for approval of its proposed 2004 rates for ongoing Competition Transition Charges (CTC). PG&E's application was protested by the Modesto Irrigation District (MID) and the Office of Ratepayer Advocates (ORA).

A prehearing conference (PHC) was held on January 9, 2004 to discuss the issues, the motions filed by PG&E, whether evidentiary hearings are needed, and the procedural schedule.

This scoping memo and ruling identifies the issues in this proceeding, and determines the schedule that will be followed in this proceeding. PG&E's motion for an interim decision regarding the 2004 ERRA revenue requirement and the 2004 CTC revenue requirement is granted. However, the interim decision is subject to evidentiary hearings on the CTC issue, and possible change or adjustment in a later decision.

Background

PG&E's ERRA application was submitted for filing in response to the Commission's directives in Decision (D.) 02-10-062 and D.02-12-074. Concurrent with the filing of its application, PG&E filed a motion for a protective order, and a motion "for authority to file and maintain confidential, commercially sensitive, proprietary information under seal."¹

ORA and MID filed separate protests to PG&E's application on September 4 and September 8, 2004, respectively. MID's protest challenges the calculation and rate design of the CTC. ORA's protest agrees with how PG&E has framed the issues to be decided in this proceeding, but as of the filing of the protest, had not formulated a position on the merits of PG&E's application. ORA's protest states that evidentiary hearings might be necessary.

PG&E filed a reply to both protests on September 18, 2003.

¹ PG&E's motion for a protective order and motion to file under seal will be addressed in a separate ruling.

On December 16, 2003, PG&E filed a motion requesting an interim decision on the ERRA revenue requirement for 2004, and the CTC revenue requirement for 2004. A response to PG&E's motion was filed by MID on December 31, 2003.

A PHC was noticed for, and held on, January 9, 2004.

Motion For Interim Decision

PG&E's motion requests that the Commission expeditiously issue an interim decision adopting, on an interim basis subject to true-up, PG&E's ERRA revenue requirement and ongoing CTC revenue requirement for 2004. As presented in PG&E's application, the ERRA revenue requirement is \$1.524 billion, and the CTC revenue requirement is \$840.2 million. However, these revenue requirements are expected to change slightly as a result of the requirement in D.03-12-062 that PG&E and the other investor-owned electric utilities update their short-term procurement plans to reflect changes to fuel price forecasts and open positions. As part of PG&E's motion for an interim decision, PG&E proposes that "upon filing its updates to the 2004 ERRA forecast and ongoing CTC revenue requirements, that the updated ERRA and ongoing CTC revenue requirements supersede [sic] the August 1, 2003 proposed revenue requirements and corresponding rates, and that the updated revenue requirements become effective on the date of PG&E's update filing, subject to true-up based on the final decision issued in this proceeding." (PG&E Motion, p. 2.)

In its motion, PG&E contends that it is necessary to adopt interim ERRA and ongoing CTC revenue requirements for 2004 in order to implement the proposed rate reduction proposed in PG&E's Plan of Reorganization, and to set initial rates. (PG&E Motion, p. 1.)

MID's response to PG&E's motion contends that PG&E is essentially seeking approval of PG&E's ERRA revenue requirement and its CTC revenue requirement without any evidentiary support or participation by other parties. MID also contends that PG&E has not provided any support for the necessity of issuing an interim decision.

At the PHC, PG&E argued that its motion for an interim decision should be granted because of the likelihood a trigger application will have to be filed. In D.02-12-074, we authorized PG&E to file an expedited trigger application any time its forecast indicates it will face an undercollection in excess of the 5% threshold. (D.02-12-074, pp. 41, 69.) The trigger amount was set at \$223.5 million in D.03-10-059.

PG&E points out that at the end of November 2003, the ERRA balance was undercollected by \$189 million. PG&E expects that the undercollection will continue to grow by approximately \$13 million per month, and that the undercollection will hit the trigger amount in February or March 2004. If PG&E needs to file a trigger application, PG&E believes this will impose considerable resource constraints on PG&E, other parties, and on the Commission.

If an interim decision is issued, PG&E contends that it would only change the amount of the revenue requirement that PG&E would record on a monthly basis in the ERRA, which would be subject to true-up in a final decision. An interim decision would allow PG&E to avoid having to file a trigger application.

PG&E acknowledged at the PHC that departing load customers could experience rate swings if an interim decision issued regarding the CTC revenue requirement, and during the true-up in the final decision, the adopted CTC rate was lower.

PG&E also contends that the Commission should “adopt an interim 2004 ongoing CTC revenue requirement because, upon implementation of PG&E’s Plan of Reorganization, the Transition Revenue Account will cease to exist, and PG&E will begin to record ongoing CTC and corresponding revenue into the Modified Transition Cost Balancing Account (MTCBA).” (PG&E Motion, p. 5, footnotes omitted.)

MID stated at the PHC that due to the possible rate swing on departing load customers, it opposed PG&E’s motion for the Commission to issue an interim decision. MID also contends in its response to PG&E’s motion that PG&E has provided no explanation as to why the MTCBA cannot be implemented without having to adopt the 2004 ongoing CTC revenue requirement on an interim basis.

In deciding whether PG&E’s motion for an interim decision should be granted or not, three competing interests need to be weighed. The first interest is if an interim decision is not issued, there is a possibility that PG&E may have to make a trigger filing application. Pub. Util. Code § 454.5(d)(3) provides that the “commission shall determine the schedule for amortizing the overcollection or undercollection in the balancing account to ensure that the 5% threshold is not exceeded.” In D.02-12-074, the Commission stated that:

“... pending completion of further review of PG&E’s ERRa account ..., the Commission commits to act as rapidly as necessary on rate changes requests, consonant with § 454.5’s requirement that ‘[t]he Commission shall ... adjust rates or order refunds as necessary, to promptly amortize a balancing account, according to a schedule determine[d] by the Commission.’” (D.02-12-074, pp. 41-42.)

The second interest to consider is whether MID and other parties will have the opportunity to challenge the amount and calculation of the CTC revenue requirement, and the proposed rate design.

The third interest is the need to implement the proposed rate reduction that was adopted as part of the Modified Settlement Agreement that the Commission approved in PG&E's bankruptcy proceeding in D.03-12-035. (See D.03-12-035 at pp. 49, 78, FOF 17.)

If PG&E's "forecasts indicate it will face an undercollection in excess of the 5% threshold," PG&E is authorized to file an expedited trigger application at any time. (D.02-12-074, p. 41.) If this occurs, we will face the challenge of resolving the application currently before us, as well as the trigger application. The preparation of the trigger application will require PG&E to commit additional resources, and the Commission and other parties will also have to devote resources to resolve the trigger application filing. Issuing an interim decision will close the gap on the undercollection reaching the trigger amount, which should obviate the need for PG&E to file a trigger application in the short-term.

If PG&E's motion is granted, the issuance of an interim decision will result in an interim 2004 ERRRA revenue requirement and a 2004 CTC revenue requirement. However, as PG&E acknowledged at the PHC, departing load customers could experience rate swings if the CTC revenue requirement in the interim decision differs from what is adopted in the final decision.

Weighing PG&E's concern about a possible trigger application and the need to implement the Settlement Plan,² with MID's concern over the

² The Modified Settlement Agreement refers to the "Settlement Plan," which is described as PG&E, PG&E Corporation, and the Commission jointly supporting a plan of reorganization for PG&E as set forth in the Modified Settlement Agreement. (D.03-12-035, Appendix C, p. 2, Recitals, Par. F.)

applicability and calculation of the CTC to departing load customers, PG&E's motion for an interim decision should be granted.

PG&E's recent Advice Letter 2465-E filing on January 26, 2004 includes as part of its 2004 proposed electric revenue requirement an electric procurement revenue requirement of \$2.205 billion. According to PG&E's advice letter, this amount is based on its most recent estimate of 2004 procurement costs proposed in this ERRA proceeding, which includes the on-going CTC forecast of the revenue requirement for 2004. (Advice Letter 2465-E, Attachment 1, p. 4.) In order to fulfill the Commission's commitment to "adopt such decisions and orders as necessary to implement and carry out the provisions" of the Modified Settlement Agreement, PG&E's motion for an interim decision on the 2004 ERRA revenue requirement and the 2004 CTC revenue requirement should be granted. (D.03-12-035, App. C, p. 2.)

As described below, the Commission will hold hearings on the CTC issue that MID raised. Thus, MID will have the opportunity to litigate the CTC issue. Accordingly, PG&E's motion for an interim decision is granted. However, the granting of PG&E's motion for an interim decision shall not prejudice the evidentiary hearing regarding the CTC issue, and the interim decision may be changed or adjusted by a subsequent decision addressing the CTC issue.

The schedule for the processing of the interim and final decisions is discussed below.

Scope of Issues

Three issues were identified at the PHC. The first issue is whether PG&E's proposed 2004 ERRA revenue requirement amount of \$1.524 billion, which may be revised as a result of D.03-12-062, should be adopted.

The second issue is whether PG&E's proposed 2004 CTC revenue requirement of \$840.2 million, which may be revised as a result of D.03 12-062, and the rate design proposal, should be adopted.

The third issue is whether PG&E's contract administration, generation resource dispatch, and procurement activities for January 1, 2003 through May 31, 2003 should be approved.

No one has requested any evidentiary hearings on the first issue.

MID believes that evidentiary hearings are needed on the second issue.

At this time, ORA is unsure whether evidentiary hearings are needed on the third issue. ORA and PG&E request that hearing dates for the third issue be reserved in the event hearings are needed. ORA plans to notify the service list to this proceeding in March 2004 as to whether ORA desires to proceed with the hearings.

After reviewing the application, the protests, PG&E's reply to the protests, and the comments expressed by the parties at the PHC, evidentiary hearings on the issue regarding the CTC 2004 revenue requirement, and PG&E's rate design proposal, will be held in accordance with the schedule outlined below. No hearings are needed on the 2004 ERRRA revenue requirement.

The evidentiary hearings on the CTC 2004 revenue requirement issue will be held on April 5 through April 8, 2004, starting at 9:00 a.m. in the Commission Courtroom, State Office Building, 505 Van Ness Avenue, San Francisco, California. The prepared testimony of parties other than PG&E shall be served

on the service list on March 19, 2004.³ The rebuttal prepared testimony on this issue shall be served on March 30, 2004.

With respect to PG&E's contract administration, generation resource dispatch, and procurement activities for January 1, 2003 through May 31, 2004, three days of evidentiary hearings shall be reserved for May 12 through May 14, 2004. ORA will be directed to notify the parties to this proceeding on or before March 15, 2004 as to whether ORA believes these evidentiary hearings are necessary. In the event ORA decides hearings are necessary, ORA's prepared testimony shall be served on the parties on April 9, 2004, rebuttal testimony shall be served on April 26, 2004, and a PHC will be scheduled before the start of hearings.

This application was preliminarily categorized as ratesetting in Resolution ALJ 176-3117 on August 21, 2003. Today's ruling confirms that categorization. Anyone who disagrees with this categorization must file an appeal of the categorization no later than 10 days after the date of this ruling. (See Rule 6.4.) As a ratesetting proceeding, the ex parte rules contained in Rule 7(c) of the Commission's Rules of Practice and Procedure apply to this proceeding.

The principal hearing officer for this proceeding shall be ALJ Wong.

It is expected that this proceeding will be completed within 18 months from the filing of PG&E's application.

Schedule

The following is the schedule that will be followed in this proceeding.

Draft of interim decision issued on the	On or about February 13, 2004
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³ PG&E's prepared testimony was submitted as part of its application on August 1, 2003.

2004 ERRA revenue requirement and the 2004 CTC revenue requirement.	
Comments and reply comments on draft of interim decision.	In accordance with Rule 77.7
ORA to notify parties if it plans to proceed with evidentiary hearings on the third issue.	March 15, 2004
Interim decision on the 2004 ERRA revenue requirement and 2004 CTC revenue requirement adopted by the Commission.	On or about March 16, 2004
PHC regarding third issue, if needed.	To be determined in a future ruling.
Non-PG&E prepared testimony on 2004 CTC revenue requirement issue to be served.	March 19, 2004
Rebuttal prepared testimony on 2004 CTC revenue requirement issue to be served.	March 30, 2004
Evidentiary hearings regarding 2004 CTC revenue requirement issue.	April 5 through April 8, 2004 in San Francisco starting at 9:00 a.m.
ORA testimony to be served if evidentiary hearings on the third issue are needed.	April 9, 2004
Rebuttal testimony to be served if evidentiary hearings on the third issue are needed.	April 26, 2004
Evidentiary hearings regarding third issue, if needed.	May 12-14, 2004
Proposed decision on 2004 CTC revenue requirement issue and 2004 ERRA revenue requirement to be issued. (Proposed decision will address third issue if no hearings held on the third issue.)	On or about August 3, 2004
Decision on the 2004 CTC revenue requirement issue and 2004 ERRA revenue requirement adopted by the Commission.	On or about September 2, 2004
Proposed decision on the third issue to be issued, if needed.	On or about September 7, 2004
Decision on the third issue adopted by the Commission, if needed.	On or about October 7, 2004

IT IS RULED that:

1. The December 16, 2003 motion of Pacific Gas and Electric Company for an interim decision regarding the 2004 Energy Resource Recovery Account revenue

requirement and the 2004 Competition Transition Charges revenue requirement, is granted.

2. Administrative Law Judge John S. Wong is designated the principal hearing officer for this proceeding.

3. The scope of issues is explained in the body of this ruling.

4. The schedule for this proceeding will follow the schedule set forth in this ruling.

Dated February 3, 2004 at San Francisco, California.

/s/ MICHAEL R. PEEVEY

Michael R. Peevey
Assigned Commissioner

/s/ JOHN S. WONG

John S. Wong
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Scoping Memo and Ruling of the Assigned Commissioner and Administrative Law Judge Regarding the 2004 Energy Resource Recovery Account Application on all parties of record in this proceeding or their attorneys of record.

Dated February 3, 2004, at San Francisco, California.

/s/ ELIZABETH LEWIS
Elizabeth Lewis

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.